IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5746 of 2004

with

Civil Application No. 7744 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BAKALI RUKIYABAI AADAM

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5746 of 2004

MR NV ANJARIA for Petitioners.

Mr. Nagesh Sood, AGP for Respondent No. 1-3,5

MR PRASHANT G DESAI for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 25/01/2005

ORAL JUDGEMENT

In this petition under Article 226 of the

Constitution of India, the petitioners have prayed for an appropriate writ, order or direction directing the respondents No. 1, 2 and 3, i.e., Secretary, Revenue Department, State of Gujarat, Collector, Kutch, and the Deputy Collector, Kutch to require Talati-cum-Mantri, Bhuj, respondent No.5 herein to give effect in the Record of Rights to the order dated 30th September 1994 passed by the Deputy Collector, Bhuj, Kutch and further directing the respondent No.5, Talati-cum-Mantri, Bhuj, Kutch to mutate names of the petitioners in the Revenue record as owners of land admeasuring 7 gunthas bearing Survey No.7/1 situate in the Northwest corner of the Traverse Survey No. 870 (old Survey No. 8579) in the City Survey Ward of the town of Bhuj-Kutch. A further prayer is also sought directing the respondent No.2, Collector-Kutch-Bhuj to give approval as sought by the respondent No.3, Deputy Collector, Kutch-Bhuj in communication dated 17th January 2005 to the order dated 30th December 1994 passed by respondent No.3. A Civil Application No. 7744 of 2004 is also moved in the present Special Civil Application praying for directing the Bhuj Area Development Authority to maintain status-quo with regard to status of the petitioners' land admeasuring 7 gunthas (700 sq.mtrs.) bearing Survey No. 7/1 as stated above.

2. Shri NV Anjaria, learned advocate appearing on behalf of the petitioners, has submitted that in a proceeding under Section 37(2) of the Bombay Land Revenue Code the Deputy Collector has already passed an order on 30th December 1994 declaring that the land in question is not a Government land and belongs to the petitioners. He has also further submitted that the said order has become final as as on today it is neither modified or reversed by the competent forum. It is also submitted that the Deputy Collector has already sent necessary proposal to the respondent No.2 Collector, Kutch-Bhuj giving approval to the order passed by him dated 30th December 1994 which is not given till date. It is submitted that if effect of the order passed by the Deputy Collector dated 30th December 1994 is given then the petitioners would be entitled to the land under the Town Planning Scheme on the scheme being finalised as proposed by respondent No.4, Bhuj Urban Development Authority. It is submitted that in view of the fact that effect of the order passed by the Deputy Collector, Bhuj-Kutch dated 30th December 1994 is not given by the respondents No.1 to 3 and 4 the petitioners are facing difficulties and the title of the land in question is not clear and therefore the present Special Civil Application has been filed.

3. In response to the notice issued by this Court, Shri PG Desai, learned advocate appears on behalf of respondent No.4 Bhuj Urban Development Authority. It is submitted in the affidavit-in-reply that in fact against the aforesaid land in question the power of attorney holder of the petitioners, one Ibrahim Suleman Sumra, made an application to the authority for sub-plotting the land and considering the same the sub-plotting is also made by the respondent No.4 authority. It is also submitted that the disputed property is falling in sanctioned Town Planning Scheme No.8 and the petitioners' land isi part of O.P. No. 1670 which has been allotted F.P. No. 1112. It is also submitted that the Town Planning authority has sanctioned the sub-plotting of the entire land. It is also further submitted that the petitioners are having the land admeasuring 707 mtrs. and in lieu of the same petitioners have been allotted 370 mtrs. of land as per the request of the coowner in the O.P. No. 1670 falling in T.P. Scheme No.8 (which has been allotted final plot No. 1112).

4. Shri Sood, learned AGP has submitted that there is no decision taken by the respondent No.2, Collector, Kutch-Bhuj on the application/proposal sent for the purpose of approval of the order passed by the Deputy Collector, Kutch-Bhuj dated 30th December 1994 and the same is pending and therefore requested that the title of the land in question being not clear the petitioners cannot be considered to be owners of the land in question pursuant to the order passed by the Deputy Collector, dated 30th December 1994 and therefore it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties. This Court, while admitting the present Special Civil Application, passed the following order on 28th September 2004.

"Rule and notice as to interim relief returnable on 13/10/04. Mr. Gori waives service on behalf of respondent Nos. 1, 2, 3 & 5 and Mr. Desai waives service on behalf of respondent No.4.

2. Matter to be listed on admission board for final disposal.

3. By interim order, it is directed that it will be open to the respondent No.4 authority to proceed on the basis of the order, dated

30.12.1994 passed by the Dy. Collector under section 37(2) of the Act unless the said order is stayed or modified or reversed by the competent forum known to law.

DS permitted."

It is an admitted position, that, as on today, the order passed by the Deputy Collector, Kutch-Bhuj dated 30th December 1994 stands. Those proceedings arise under Section 37(2) of the Bombay Land Revenue Code. It is also an admitted position that as such the effect of the said order is already given by the respondent No.4 - Bhuj Urban Development Authority and the petitioners/power of attorney holders of the petitioners and the coowners are allotted land admeasuring 370 sq.mtrs. of land in lieu of land for which the order came to be passed by the Deputy Collector dated 30th December 1994. It is also an admitted position that the proposal for approval sought by respondent No.3, i.e., Deputy Collector, Kutch-Bhuj to approve the order dated 30th December 1994 is still pending with the Collector-Kutch-Bhuj. It is not very clear under which provision of law approval is sought by the Deputy Collector, Kutch-Bhuj. Be that as it may, considering the aforesaid facts and circumstances and considering the affidavit-in-reply filed on behalf of the Bhuj Urban Development Authority respondent No.4 herein, it is directed that it will be open to the Bhuj Urban Development Authority to proceed on the basis of the order dated 30th December 1994 passed by the Deputy Collector, Kutch-Bhuj. It seems that the respondent No.4 has already proceeded on the basis of the aforesaid order dated 30th December 1994 and against the aforesaid land, land admeasuring 370 sq.mtrs. of land is already allotted under the Town Planning Scheme which has become final. It is also declared that, as on today, the order passed by the Deputy Collector, Kutch-Bhuj dated 30th December 1994 under Section 37(2) of the Act stands, and the same shall continue to be in operation unless the said order is stayed or modified or reversed by the competent forum known to law.

6. With these observations and direction, the present Special Civil Application is disposed of accordingly. Rule is partly made absolute to the above extent. Direct service is permitted.

7. In view of dismissal of the main Special Civil Application, no orders on Civil Application No. 7744 of 2004.

[M.R. Shah, J.]

rmr.